IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.238/2001 & 286/2001

WRIT PETITION NO. 238/2001

Mrs. Bharati Santosh Pai, aged about
45 years, Indian National, resident
of Comba, Margao, Goa. ..... Petitioner.

V/s.

1. UCO Bank, a Banking Company &
Nationalised Bank under the Banking
Companies (Acquisition and Transfer
of Undertakings) Act, 1976, through its
Manager, Margao Branch,
Margao, Goa.

2. The General Manager, (Personnel)
UCO Bank, Head Office,
Personnel Department, 12,
Old Court House Street, Kolkata-100 001 ..... Respondents.

WRIT PETITION NO. 286/2001

Mrs. Smriti Prasad Sinai Audi,
Major of age, Indian National, resident
of Margao, Goa. ..... Petitioner.

V/s.

1. UCO Bank, a Banking Company &
Nationalised Bank under the Banking
Companies (Acquisition and Transfer
of Undertakings) Act, 1976, through its
Manager, Margao Branch,
Margao, Goa.

2. The General Manager, (Personnel)
UCO Bank, Head Office,
Personnel Department, 12,
Old Court House Street, Kolkata-100 001 ..... Respondents.

Mr. M.S. Sonak, Advocate for the petitioners.

Mr. P.P. Singh, Advocate for the respondents.

CORAM : P.V. HARDAS &
D.G. KARNIK, JJ.

DATE : MARCH 22, 2004.

ORAL JUDGMENT : (Per HARDAS, J.)

These petitions have been filed by the petitioners praying for issuance of a writ of mandamus directing the respondents to withdraw the communications dated 3.4.2001 and 30.4.2001. The petitioners have also prayed for an interim relief directing the respondents to reinstate the petitioners in service. We may incidentally state here that by an order dated 24th September, 2001, while issuing the Rule, this Court had directed respondent No.1 to continue the petitioner in service and the petitioner was permitted to join the service forthwith with respondent No.1. This Court had also directed that the petitioner to be paid salary and was entitled for future increments. Earlier to passing of this order, by an order dated 27th August, 2001, this Court had directed the petitioner to deposit the entire monetary benefits received from respondent No.1. Undisputedly, the petitioners have deposited the monetary benefits received from respondent No.1. Bank.

2. The facts, as are necessary for the decision of these petitions, may briefly be stated as under :

The petitioner in Writ Petition No.238/2001 is in service with respondent No.1 Bank since the year 1981. Respondent No.1 Bank circulated a scheme for voluntary retirement of its employees. A few

conditions which are concerned with the present petitions are :

Clause No. 10.4 stated that a mere request of an employee seeking voluntary retirement under the Scheme would not take effect until and unless it is accepted in writing by the Competent Authority. Clause No.10.5 of the Scheme stated that it would not be open for an employee to withdraw the request made for voluntary retirement under the scheme after having exercised such option. Clause 10.6 of the Scheme vested absolute discretion with the Competent Authority to accept or reject the request of the employee seeking voluntary retirement

In pursuant to the Scheme, the petitioner had applied for the benefit under the said Scheme by application dated 19.1.2001. While the said application of the petitioner was pending consideration before respondent No.1, the petitioner by her letter dated 28/3/2001 sought withdrawal of her application seeking voluntary retirement. Respondent No.1 Bank by a communication dated 3.4.2001 informed the petitioner that her request was accepted by the Bank on certain conditions which were stipulated in the said letter. The petitioner was, therefore, directed to be relieved from the service of the Bank at the close of business on 30.4.2001. The petitioner received the said letter subject to consideration of her withdrawal letter dated 28th March, 2001. The petitioner again represented by her letter dated 23.4.2001 to respondent No.1 and requested the Authorities to convey to her the decision on her letter dated 28.3.2001 seeking withdrawal of her application for voluntary retirement. The respondents by their letter dated 30.4.2001 relieved the petitioner in pursuant to her application for voluntary retirement. The petitioner by her communication dated 19.6.2001 informed respondent No.1 that she had

accepted the monetary benefits without prejudice to her right under her letter dated 28th March, 2001 withdrawing her application for voluntary retirement.

3. The facts in the other case are virtually similar. The petitioner therein had submitted an application for voluntary retirement on 22.1.2001. Thereafter, the petitioner by letter dated 28/3/2001 had withdrawn her application seeking voluntary retirement. The respondents by their letter dated 3.4.2001 which was received by the petitioner on 23.4.2001 communicated the acceptance to the petitioner. The petitioner had accepted the monetary benefits without prejudice to her right seeking withdrawal of her application for voluntary retirement. The affidavit of the respondents opposing the petition and the grounds stated therein are also similar. In view of this, both these petitions are being decided by this common Judgment.

4. The respondents, in their Affidavit dated 24.9.2001 have principally opposed the petition on the ground that the clauses in the Voluntary Retirement Scheme prohibited an employee from withdrawing the application for voluntary retirement once submitted. Secondly, it is stated in the Affidavit that the respondent Bank had accepted the application of the petitioner for voluntary retirement on 12.3.2001 i.e. much prior to the petitioner sending her application seeking withdrawal of her application for voluntary retirement. Thus, according to the respondent Bank, in view of the fact that they had accepted the letter of the petitioner prior to the letter of the petitioner seeking withdrawal, it was a concluded contract between the respondent Bank and the petitioner. Lastly, it is urged before us that since

the petitioner had accepted the monetary benefits, the petitioner was not entitled to turn around and claim that she would be entitled to withdraw her application for voluntary retirement.

5. In respect of the first ground urged on behalf of the respondents, Mr. M.S. Sonak, the learned Counsel for the petitioner has relied on the Judgment of the Division Bench of this Court in the case of ***Jai Singh Chauhan vs. Punjab National Bank and ors.,*** reported in 2001 II CLR 723. The Division Bench of this Court had held that an employee had right to withdraw his offer of voluntary retirement before it was accepted and he was relieved and the petitioner therein had withdrawn his offer much earlier to its acceptance. In the present case, as can be seen, the petitioner had submitted her application on 19.1.2001 and had submitted her letter on 28.3.2001, withdrawing her application seeking voluntary retirement. Undoubtedly, the respondent No.1 Bank had accepted the application of the petitioner on 12.3.2001. Respondents had communicated the acceptance to the petitioner by their letter dated 3.4.2001 which was received by the petitioner on 23.4.2001. As far as the petitioner was concerned, the communication of acceptance of the offer was on 23.4.2001. The petitioner had submitted her letter dated 28th March, 2001 seeking withdrawal of her application for voluntary retirement before the communication of the acceptance of the offer by the respondents. As per Section 4 of the Contract Act, the communication of the proposal would be complete when it comes to the knowledge to whom it is made. In the present case, the proposal would be complete on 23.4.2001 when the letter was received by the petitioner. Before the communication of acceptance of the

proposal, the petitioner by her letter dated 28.3.2001 had communicated withdrawal of her proposal. In view of these facts, therefore, according to us, respondent No.1 Bank is not correct in its submission that since the proposal of the petitioner was accepted on 12.3.2001, the petitioner was not entitled to seek withdrawal.

6. Mr. Singh, the learned Counsel appearing on behalf of the Bank has fairly stated that merely because the voluntary retirement scheme contained a clause that a person once submitting the application would not be entitled to withdraw it, the petitioner by virtue of that clause would not be prohibited from withdrawing such an application. However, it is urged before us that since the petitioner had accepted the monetary benefits, the petitioner cannot be allowed to approbate and reprobate, and the petition, therefore, deserves to be dismissed. In the present case, the petitioner has accepted the monetary benefits without prejudice to her right to withdraw her letter seeking voluntary retirement as communicated by her through her letter dated 28th March, 2001. By an order of this Court, the petitioner was asked to deposit with the respondent Bank the monetary benefits received by the petitioner. The petitioner had undeniably deposited the monetary benefits. This Court had directed respondent No.1 to continue the petitioner in service. Since the petitioner had accepted the monetary benefits without prejudice to her rights, we see no force in the contention of the learned Counsel for the respondent that the petitioner is foreclosed from challenging the acceptance of her proposal since the petitioner had submitted letter for withdrawal of her proposal for voluntary retirement much before the acceptance was communicated to her. The monetary benefits had been

received by the petitioner after the petitioner had sent her letter dated 28.3.2001 withdrawing her offer of voluntary retirement. According to us, the action of the respondents in relieving the petitioner from duty in view of the proposal submitted by her is not correct. Even, otherwise, according to us, the very challenge of the respondents in the present petition stands concluded in view of the Judgment in the case of ***Bank of India and ors. vs. O.P. Swarnakar and ors.,*** (2003) 2 SCC 721. The Apex Court in paras 60, 66, 74, and 75, has observed thus :

> " 60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing. This clause is crucial in view of the fact that therein the acceptance or rejection of such request has been provided. The decision of the authority rejecting the request is appealable to the Appellate Authority. The application made by an employee as an offer as well as the decision of the bank thereupon would be communicated to the respective General Managers. The decision-making process shall take place at various levels of the banks.
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> 66. The proposal of the employees when accepted by the bank would constitute a promise within the meaning of Section 2(b) of the Act. Only then the promise becomes an enforceable contract. In the instant case the banks when floating the Scheme did not signify that on the employees assenting thereto a concluded contract would come into being in terms whereof they would be permitted to retire voluntarily and get the benefits thereunder
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> 74. We, therefore, have no hesitation in coming to the conclusion that the Voluntary Scheme was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an "offer".
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> 75. Once the application filed by the employees is held to be an "offer", Section 5, in absence of any other independent binding contract or statute or statutory rules to the contrary would come into play."

7. We have given our anxious consideration to the rival submissions and we are of the considered opinion that since the petitioners had applied for withdrawal of the letter seeking voluntary retirement before the decision taken by the respondents thereon was communicated to the petitioners, the petitioners were entitled to withdraw the same. Accordingly, Writ Petitions No.238/2001 and 286/2001 are allowed. Rule is made absolute in terms of prayer clause (A) (II). The interim order directing reinstatement of the petitioners in service of respondent Bank as also the interim order directing refund of the monetary benefits received by the petitioners are made absolute. In the circumstances, there shall be no orders as to costs.

P.V. HARDAS, J.

D.G. KARNIK, J.

ssm.